



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/751,208	12/29/2000	Kenneth S. Bailey	VTC.0107	8869
20985	7590	06/10/2004	EXAMINER	
FISH & RICHARDSON, PC 12390 EL CAMINO REAL SAN DIEGO, CA 92130-2081			NGUYEN, VINCENT Q	
			ART UNIT	PAPER NUMBER
			2858	

DATE MAILED: 06/10/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/751,208	Applicant(s) BAILEY ET AL.	
	Examiner Vincent Q Nguyen	Art Unit 2858	

-- The MAILING DATE of this communication appears on the cover sheet with the corresponding address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Amendment filed 5/20/2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 3-11, 14, 17, 19- 25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3-7,9,10,17 and 19-25 is/are rejected.
- 7) ☒ Claim(s) 8,11 and 14 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 13 June 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Drawings

1. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description:

ALL the numbers, such as, 10-13, 15, 17-19, ... etc. as disclosed in the specification (e.g. pages 6-12) are not in the drawings (The drawings do not have numbers 10, 11, 12, 13 ... etc.).

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "server", the "means for relaying said measured dimensions from said processor means", (e.g. claim 11) must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

It is noted that the item 110, as applicant mentioned in the amendment filed on May 20, 2004, is not found in the drawings.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Applicant is required to submit a proposed drawing correction in reply to this Office action. However, formal correction of the noted defect may be deferred until after the examiner has considered the proposed drawing correction. Failure to timely submit the proposed drawing correction will result in the abandonment of the application.

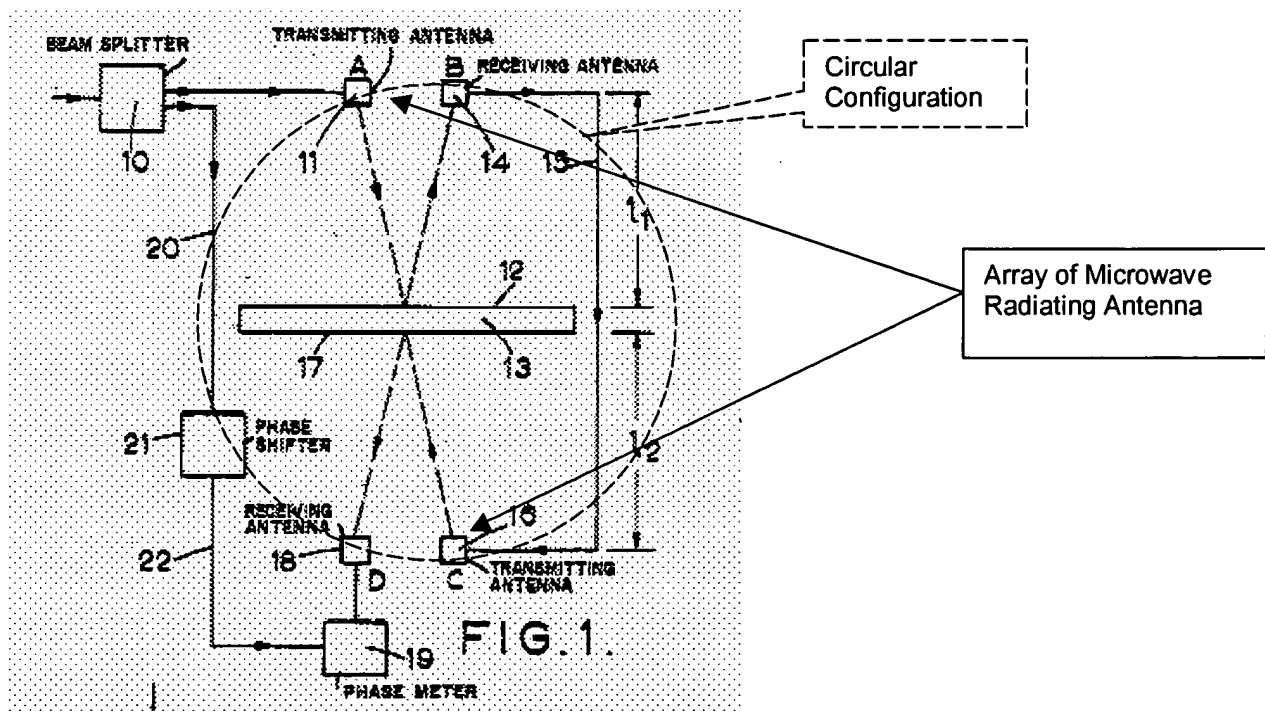
Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 3, 5, 7, are rejected under 35 U.S.C. 102(b) as being anticipated by Williams (3,490,037).



Regarding claim 1, Williams discloses an apparatus and method for measuring dimensions of an object comprising (figure 1) a source (Connects to element 10) of microwave signals having a predetermined amplitude and frequency (The amplitude/frequency is predetermined by the state of the system; see also figures 4-6 and their corresponding through out the entire disclosure) including an array of microwave radiating antennas (11, 16), spaced from one another long a first direction (Arrow direction); at least one microwave receiver antenna (14) which is located spaced from said radiating antennas (11, 16) along a second direction which is substantially orthogonal to said first direction during a time of scanning.

Regarding claims 3, 5, Williams discloses said radiating antennas are horizontally polarized (horizontally with respect to the direction perpendicular to radiating).

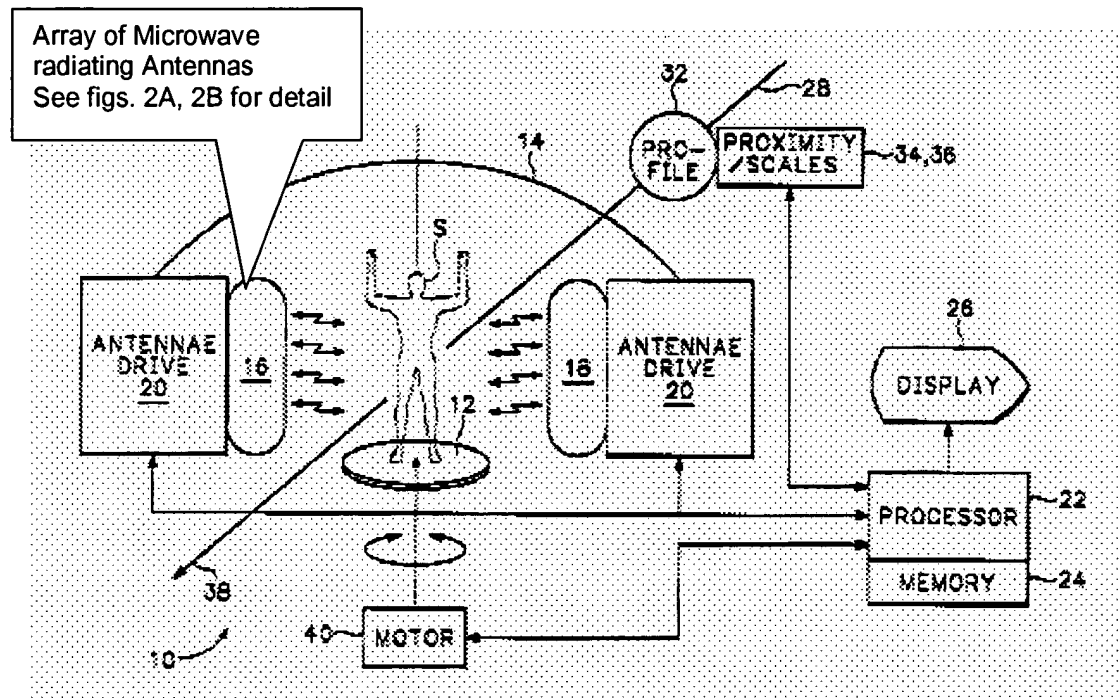
Regarding claim 7, William discloses said radiating antenna are arranged along a circular configuration (See dash lines on the attached figure above).

5. Claims 1, 9, 10, 25, are rejected under 35 U.S.C. 102(b) as being anticipated by Yuki (6,057,761).

Regarding claim 1, Yuki discloses an apparatus and method for measuring dimensions of an object comprising (figure 1) a source of microwave signals (20) having a predetermined amplitude and frequency (The amplitude/frequency is predetermined by the state of the system) including an array of microwave radiating antennas (16), spaced from one another along a first direction (See figures 2A, 2B); at least one micro

Art Unit: 2858

receive antenna which is located spaced from said radiating antennas along a second direction which is substantially orthogonal (See figure 2A) to said first direction during a time of scanning.



Regarding claims 9, 25, Yukl discloses object (S) being measured comprises a human being.

Regarding claim 10, Yukl discloses processor means (22) comprises a computer.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Yukl (6,057,761) in view of Gershberg et al. (3,801,978).

Regarding claim 4, Yukl discloses every subject matter recited in the claim except miniaturized antennas.

Gershberg et al. a system and method similar to that of Yukl and further discloses miniaturized antennas for the purpose of providing balanced Doppler mixing without complex radio frequency devices (Gershberg et al.'s column 2, 20-25).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the miniaturized antennas as taught by Gershberg et al. into the system of Yukl because it would have been desirable to enhance the system to provide balanced Doppler mixing without complex radio frequency devices.

8. Claims 7, 15, 16, are rejected under 35 U.S.C. 103(a) as being unpatentable over Yukl (6,057,761).

Regarding claim 7, the only difference between Yukl and the invention claim is that the claim recites the transmitting means and receiving means are formed in a circular configuration in place of rotating the object.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the transmitting and the receiving means formed in a circular configuration because it would have been desirable to scan entire body of the object (Yukl's column 9, lines 23-47).

Regarding claims 15, 16, Yukl does not explicitly disclose the step of communicating said extracted information to at least one user. However, it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the step of extracting information to at least one user because in order to identify or to recognize someone, his or her desired information must be extracted and deliver to the user to process.

9. Claims 17, 19-24, are rejected under 35 U.S.C. 103(a) as being unpatentable over Constant (3,691,557).

Regarding claim 17, Constant discloses a method for identifying comprising the steps of directing the microwave toward an object, measuring the unabsorbed microwave energy, determining the size and shape (Column 1, lines 25-30).

The only difference between Constant and the invention claimed is that the claim recites a step of identifying a human being in place of an object as taught by Constant.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the method to identifying the human being instead of identifying the object as taught by Constant because the function of which the step of identify the object or to identify human being does not change (e.g. using a camera to take the picture of an object or a landscape is the same as the use to take the picture of human being).

Regarding claim 19, Constant discloses said microwaves are generated by an oscillator for generating microwaves of a predetermined frequency (9) in the microwave region chosen for maximum absorption by the object.

Regarding claims 20-24, except for the step of identifying the human being, instead of identifying an object, as discussed in claim 17 above, the step of determining location where the microwave signal has been blocked by the human is the step of determining the reflected microwave (Microwave signal has been blocked is reflecting, otherwise the signal get through, no reflecting).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the step of identifying human being in stead of identifying an object into the method of Constant because of the same reason as set forth in claim 17.

10. Claim 17, is rejected under 35 U.S.C. 103(a) as being unpatentable over Stafford et al. (6,664,916).

Regarding claim 17, Stafford et al. discloses a method for identifying comprising the steps of (Figure 3) directing the microwave toward an object (Step 331), measuring the unabsorbed microwave energy (Step 333), determining the size and shape (Step 335).

The only difference between Stafford et al. and the invention claimed is that the claim recites a step of identifying a human being in place of an object as taught by Stafford.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the method to identifying the human being instead of identifying the object as taught by Stafford because of the same reason as set forth in the rejection applied to the claim with respect to Constant.

Allowable Subject Matter

11. Claims 8, 11, 14, are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

12. Applicant's arguments filed 5/20/2004 have been fully considered but they are not persuasive.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., additional dimension of information is obtained) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

In response to Applicant's argument that "claim 1 has been amended recite that the array of radiating and transmitting antenna are spaced from each other along the first direction, and moved along a second direction, orthogonal to the first direction. By

moving the antennas along an orthogonal direction to that of the spacing, an additional dimension of information is obtained”.

The spaced from each other and the orthogonal direction are read on Williams as the examiner illustrated in the figure above.

In response to Applicant's argument that “Yukl shows an antenna system, however the human subject show as S is rotated, therefore claim 1 defines a difference type of movement.

Claim 1 recites “a movement part which moves said radiating antennas along a second direction which is substantially orthogonal to said first direction during a time of scanning.” The limitations as cited in the claim read on Yukl as examiner illustrated in the rejection above. Examiner does not see any difference between the invention being claimed and Yukl's method since orthogonal direction could be any direction with respect to a direction.

Conclusion

13. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not

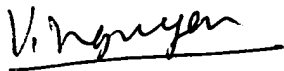
mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Contact Information

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vincent Q Nguyen whose telephone number is (571) 272-2234. The examiner can normally be reached on 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, N. Le can be reached on (571) 272-2233. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


June 4, 2004

Vincent Q Nguyen
Primary Examiner
Art Unit 2858